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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,423	11/21/2003	Eric R. Hansen	204560-73806	3387

7590 04/21/2010
BARMES & THORNBURG
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

LU, JIPING

ART UNIT	PAPER NUMBER
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3743

MAIL DATE	DELIVERY MODE
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04/21/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC R. HANSEN, RALPH A. SUPELAK,
JAMES R. TUTT and PETER F. WAY

Appeal 2009-003198
Application 10/719,423
Technology Center 3700

Decided: April 21, 2010

Before: WILLIAM F. PATE III, STEVEN D.A. MCCARTHY and
KEN B. BARRETT, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a response to a Request for Rehearing in the above-noted Appeal. Requests for Rehearing are limited to points believed to have been misapprehended or overlooked by the Panel in rendering the decision. *See* 37 C.F.R. § 41.52.

Appellants' request makes a plausible argument that the thrust of the Examiner's rejection was changed when the Panel affirmed the rejection of the claims 1-18 on appeal under 35 U.S.C. § 103(a) as unpatentable over Brandvold and Baukal. Consequently, Appellants' Request that this Board denominate the affirmed rejection as a new ground of rejection is Granted.

We acknowledge Appellants' statement in Part II of the Request that Appellants were not permitted by the rules to fully respond to the affirmed rejection. (Req. Reh'g 7). This portion of Appellants' Request will not be considered at this time to allow Appellants to fully respond to our previous decision by one of the two alternatives provided for below.

Appellants' Request for Rehearing has been Granted to the extent that we have denominated our decision as containing a new ground of rejection under 37 C.F.R. § 41.50(b). It is Denied with respect to making any other changes thereto.

The Board's decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Should Appellant elect to prosecute further before the Examiner pursuant to 37 C.F.R. § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If Appellant elects prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2009).

REQUEST FOR REHEARING GRANTED-IN-PART:

37 C.F.R. § 41.50(b)

Appeal 2009-003198
Application 10/719,423

nhl

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